

Message Text

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ACTION SS-25

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O R 021019Z DEC 76
FM AMEMBASSY AMMAN
TO SECSTATE WASHDC IMMEDIATE 9787
INFO AMEMBASSY DAMASCUS
AMEMBASSY TEL AVIV

S E C R E T SECTIN 1 OF 2 AMMAN 7183

EXDIS

E.O. 11652: GDS
TAGS: PFOR, EAID, JO,IS, SY,US
SUBJECT: MAQARIN DAM - NEXT STEPS

REF: (A) AMMAN 7123 AND PREVIOUS, (B) STATE 286713

1. SUMMARY: WE BELIEVE EVENTS HAVE PUSHED MAQARIN ISSUE FAR ENOUGH ALONG NOW TO MOVE TO POLITICAL LEVEL AND BEGIN CONSIDERATION OF NEGOTIATION PROCESS. BAXTER'S LEGAL STUDY AND GOI REQUEST FOR HARZA REPORT, ALONG WITH GOJ INTEREST IN LIMITED COMPROMISE AND GOJS AND GOI'S EXPRESSED WISH FOR USG TO PLAY SOME KIND OF INTERMEDIARY ROLE, HAVE BROUGHT US TO THIS POINT. TWO BASIC QUESTIONS ARE: (A) SHALL USG BECOME INVOLVED IN INTERMEDIARY ROLE AND (2), IF SO, WHAT PROCUDURAL STEPS AND SUBSTANTIVE POSITINS LAY BEFORE US? I BELIEVE ARGUMENTS FOR OUR BECOMING INTERMEDIARY OUTWEIGH OBVIOUS POTENTIAL DRAWBACKS. IF WE DECIDE TO GO AHEAD BELIEVE WE SHOULD BEGIN BY INFORMING GOJ AND GOI OF OUR WILLINGNESS TO BECOME INTERMEDIARY. OUR APPROACH SHOULD BE TO GIVE BOTH SIDES AN ASSESSMENT OR APPRECIATION OF THE SITUATION, INCLUDING A DESCRIPTION OF THE PROJECT AND THE WATER RIGHTS PROBLEM. WE WOULD THEN SEEK THEIR REACTIONS AS A BASIS FOR DEVELOPING OUR OWN VIEWS ON COMPROMISES AND, IF EVENTUALLY REQUIRED, A USG POSITION. IN THE PROCESS AND AS APRT OF THE NEW POLITICAL PHASE, WE WOULD UNILATERALLY DECIDE TO EXCHANGE ANY INFORMATION AVAILABLE
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TO US FROM ANY SOURCE WHICH WE THOUGHT WOULD MOVE THINGS ALONG. WE SHOULD DELAY TAKING A POSITION ON SUBSTANTIVE SPECIFICS OF COMPROMISE UNTIL WE ARE WELL INTO THE ONC-SULTATION PROCESS, BUT PRECEDENT AND WHAT APPEARS TO BE

PREFERENCES OF PARTIES THEMSELVES SUGGEST SOME MEASURE OF JOHNSTON PLAN PROVISIONS WILL REAPPEAR. MEANWHILE, BELIEVE BAXTER STUDY SHOULD MOVE IMMEDIATELY BEYOND IN-HOUSE PROJECT BY (1) GIVING USG AN INTERIM REPORT NOW AND (2) ONCE USG MAKES DECISION TO PLAY INTERMEDIARY ROLE, FO US TO OFFER FOR BAXTER TO TRAVEL TO ISRAEL. VISIT TO ISRAEL MIGHT BE SIMILAR TO MISSION IN JORDAN, EXCHANGING INFORMATION WHICH HE ACQUIRED IN AMMAN ON MAQARIN AND WATER ISSUES, ETC., WITH EXCEPTION OF SENSITIVE DETAILS OF JORDAN'S NEGOTIATING POSITION. WE WOULD HOPE ABOVE STEPS WOULD DEMONSTRATE TO GOI AND GOJ OUR WILLINGNESS TO BE HELPFUL IN MOVING AHEAD ON NEGOTIATION PROCESS AND OUR DETERMINATION TO TRY TO MEET CONTRACT AND OTHER DEADLINES FOR NEXT PHASE. END SUMMARY.

2. WE HAVE CONSIDERED OVER PAST SEVERAL DAYS A NUMBER OF OPTIONS ON HOW TO PROCEED WITH MAQARIN QUESTION. WE BELIEVE THAT SEVERAL BASIC ASSUMPTIONS SHOULD UNDERLIE ANY DECISION:

(A) THE PRESENT LEGAL STUDY WAS UNDERTAKEN ORIGINALLY AS AN IN-HOUSE PROJECT DESIGNED TO PROVIDE BASIC INFORMATION ON REPARIAN LAW APPLICABLE TO A BRAODER POLITICAL CONSIDERATION OF GOING AHEAD WITH MAQARIN;

(B) THAT STUDY AND THE HARZA REPORT HAVE NOW RAISED THE QUESTION OF DIPLOMATIC NEGOTIATION AND PROBABLY CAN NO LONGER BE EXCLUDED FROM THAT CONTEXT;

(C) THE HARZA REPORT IS BARELY RELEVANT TO THE BAXTER LEGAL STUDY; IT IS SOMEWHAT MORE RELEVANT TO THE QUESTION OF FUTURE POLITICAL OR DIPLOMATIC NEGOTIATIONS TO RESOLVE THE ISSUES;

(D) THE JORDANIANS (REGTEL A) ARE INTERESTED IN WORKING OUT A COMPROMISE; THEY BELIEVE ENOUGH FLEXIBILITY EXISTS IN THEIR POSITION TO DO SON ON THE BAIS OF THE JOHNSTON PLAN PROPOSALS; BUT WOULD NOT GO SO FAR AS TO COMPROMISE TO THE EXTENT OF NOT HAVING THE DAM BUILT;

(E) THE ISRAELIS ARE CLEARLY UNCERTAIN AND PERTURBED BY THE PRESENT SITUATION, AND SOMETHING MUST BE DONE
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REASONABLY SOON TO REASSURE THEM BOTH ABOUT OUR ROLE AND JODAN'S AND ABOUT OURS AND JORDAN'S INTENTION;

(F) JORDAN WANTS TO HAVE THE US PLAY AN ACTIVE INTERMEDIARY ROLE -- THIS IS ESSENTIAL FOR US FUNDING AND FOR OBTAINING ISRAELI ACQUIESCENCE; IT WAS ALSO KEY (PRIME MINISTER RIFAI TOLD ME) TO SECURING SYRIAN COOPERATION IN THE PROJECT;

(G) THE BAXTER LEGAL WORK UP TO THE PRESENT AND ITS CONTINUATION INTO THE FUTURE MAY WELL PROVIDE AN EXTREMELY USEFUL BAISS ON WHICH TO WORK OUT THE NECESSARY POLITICAL OR DIPLOMATIC COMPROMISES; AND

(H) WE SHOULD AT MINIMUM HAVE DEVELOPED A US POSITION ON WATER RIGHTS AND OTHER POLITICAL ISSUES, AND

AT BEST EFFECTED A COMPROMISE BETWEEN THE PARTIES BEFORE
PROCEEDING WITH THE NEXT STAGE OF ENGINEERING WORKS ON
MAQARIN IN LATE SPRING 1977.

3. ALL OF THE ABOVE ASSUMPTIONS LEAD US NOW TO CONCLUDE
THAT IT IS PROBABLY TIME, GIVEN THE INCREASING ISRAELI
PRESSURE ON THE SUBJECT, TO CONSIDER THE MAQARIN PROJECT
IN A MUCH BROADER CONTEXT THAN THE EGAL STUDY OR THE
HARZA REPORT. OUR DESIRE TO GO FORWARD WITH AID FUNDING
FOR MAQARIN DESIGN WORK ALSO ARGUES FOR MOVING
QUICKLY INTO NEGOTIATIONS. BY THIS WE MEAN THAT THE US
SHOULD MOVE ON NOW TO A CONSIDERATION OF TWO QUESTIONS
WITH A VIEW TO MAKING SOME BASIC DECISIONS: (A)
WHETHER WE ARE WILLING TO PLAY THE INTERMEDIARY ROLE
ENCOURAGED BY THE JORDANIANS AND BY SOME OF OUR EARLY
RECOMMENDATIONS FROM AMMAN; AND (B) IN THE COURSE OF
THAT ROLE WHAT PROCEDURAL STEPS AND SUBSTANTIVE POSITION
WE SHOULD LOOK DOWN THE ROAD TO ADOPTING?

4. IN FAVOR OF OUR ACCEPTING A PROCEDURAL ROLE IS THE
FACT THAT THE TWO SIDES ARE PROBABLY UNLIKELY TO REACH
AN AGREEMENT IN ANY OTHER FASHION, THE PROJECT IS VITAL
TO JORDAN'S DEVELOPMENT, AND THERE APPEARS AT THIS POINT
TO BE ADEQUATE OPPORTUNITIES FOR WORKING OUT A POLITICAL
COMPROMISE. FURTHERMORE, BOTH GOJ (KING HUSSEIN IN
REFTEL A) AND GOI (BAR ON IN REFTEL B) APPEAR TO WANT
USG TO PLAY GOOD OFFICES ROLE. AGAINST THIS CAN BE

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STACKED UP A PANOPLY OF DANGERS DIFFICULT TO DEFINE IN
PRECISE TERMS HAVING TO DO WITH BEING CAUGHT IN THE
MIDDLE, FAILING IN THE EFFORT, TAKING ON NEW OBLIGATIONS
AS A RESULT OF OUR ROLE AND SO FORTH. ON BALANCE, I THINK
OUR ROLE HAS ALREADY BEGUN TO BE ONE OF BEING A MIDDLE MAN.
I SEE MORE PERSUASIVE REASONS TO CONTINUE THAN TO DRAW

BACK.

5. IF WE WERE PREPARED SHORTLY TO TELL THE ISRAELIS AND THE JORDANIANS OF OUR INTEREST IN DOING THIS, IT WOULD HELP GREATLY TO PUT IN PERSPECTIVE PRESENT DIFFICULTIES WITH LEGAL STUDY AND AHRZA REPORT. WE COULD TELL THE JORDANIANS WE WERE MOVING INTO A NEW PHASE IN WHICH WE WOULD WANT AS AN EARLY STEP TO DESCRIBE FOR BOTH SIDES OUR GENERAL APPRECIATION OF THE PROBLEM AND SEEK THEIR REACTIONS. WE WOULD THEN BE FREE UNILATERALLY TO PROVIDE TO EACH SIDE AS FULL INFORMATION AS WE DESIRED ON THE ISSUE IN ORDER TO FACILITATE OUR ROLE. THE PURPOSE OF THESE INITIAL DISCUSSIONS WOULD NOT BE TO GIVE A US POSITION, BUT ONLY TO DESCRIBE AS ACCURATELY AS WE COULD FACTUAL AND OTHER CONDITIONS IN THE MATTER. THIS WOULD BE REQUIRED IN ORDER TO SEEK FURTHER CLARIFICATION OF THE VIEWS OF BOTH PARTIES WITH THE IDEA EVENTUALLY OF DEVELOPING COMPROMISES, OR IF WE SO CHOSE, TO PROVIDE A POSITION OF OUR OWN. IT IS NOT TOO EARLY NOW TO BEGIN SUCH A PROCESS GIVEN THE TIMING WE HAVE IN MIND) I.E.,
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DECISION ON THE PROJECT BY NEXT SPRING). THE PREPARATION OF A GENERAL US APPRECIATION OF THE SUBJECT FOR BOTH SIDES, PERHAPS WITH ADDITIONAL QUESTIONS WOULD ALLOW US TO BE FORTHCOMING SOON WITH THE ISRAELIS ON ALL THE FACTS IN THE CASE AND STILL PROTECT WHAT WE KNOW ABOUT THE JORDANIAN WATER USE OBJECTIVES AS CONTAINED OR IMPLIED IN THE HARZA REPORT.

6. EARLIER I MENTIONED SUBSTANCE. I BELIEVE THAT FOR THE NEAR FUTURE, IT WOULD BE BEST FOR US TO AVOID TAKING A POSITION ON SUBSTANTIVE ISSUES UNTIL EACH SIDE HAS HAD AN OPPORTUNITY FOR TALKS WITH US. WHERE WE GO FROM THERE WILL BE DETERMINED BY A MULTIPLICITY OF FACTORS STILL HARD TO FORESEE FROM HEERE, INCLUDING GENERAL MIDEAST SITUATION. SINCE OUR HISTORICAL POSITION HAS BEEN ONE OF NOT UNDERTAKING INITIATIVES IN ECONOMIC DEVELOPMENT AND OTHER FIELDS WHICH CONTRAVENE THE JOHNSTON PLAN, BOTH SIDES WILL PROBABLY EXPECT US TO PURSUE THAT APPROACH AT SOME POINT. BOTH SIDES AT ONE TIME OR ANOTHER APPARENTLY ACCEPTED THE JOHNSTON PLAN. ALSO, SINCE BOTH SIDES HAVE BEEN COMFORTABLE WITH THE PRESENT STATUS QUO ON WATER USE, AND SINCE THE DAM CAN APPARENTLY BE BUILT WITHOUT DISRUPTING WATER FLOW IN ACCORDANCE WITH WHAT WE UNDERSTAND IS THE PRESENT STATUS QUO, IT WOULD SEEM THE STATUS QUO IS A REASONABLE BASIS FOR SETTLEMENT, WITH ONLY NEW ELEMENTS BEING WATER RIGHTS FOR OCCUPIED WEST BANK AND DEAD SEA LEVELS AND POLLUTION ISSUES. UNHAPPILY THE JOHNSTON PLAN ON THIS POINT, LIKE UNSC RES . 242, HAS AMBIGUITIES. HAPPILY, THE AMBIGUITIES SEEM TO BE STILL WITHIN A REASONABLE BALL PARK.

FINALLY, MOVING OURSELVES NOW TO TAKE ON AN INTERMEDIARY
ROLE WILL ALLOW US TO PROVIDE SIGNIFICANT DATA FROM THE
HARZA REPORT AND ELSEWHERE TO THE ISRAELIS AND JORDANIANS
AS PART OF OUR BASIC APPRECIATION OF THE SITUATION, DATA
WHICH SHOULD BE USEFUL TO THEM.

7. WHAT HAPPENS TO THE LEGAL STUDY IN ALL OF THIS? WE
BELIEVE IT IS NO LONGER POSSIBLE TO CONTINUE THE LEGAL
STUDY AS AN "IN-HOUSE," APOLITICAL PROJECT PROFESSOR
BAXTER SHOULD IMMEDIATELY PREPARE AN INFORMAL INTERIM
REPORT TO BE USED ON A BASIS FOR PART OF OUR APPRECIATION,
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HIGHLIGHTING THE PROBLEMS, QUESTIONS AND LUCUNAE.
HE SHOULD ALSO BE CONTINUED ON AS A LEGAL CONSULTANT TO THE
DIPLOMATIC EFFORT AT A SETTLEMENT. IN THIS CONTEXT, I
WOULD THINK IT USEFUL (ONCE WE MAKE A POSITIVE DECISION
ON OUR FUTURE DIPLOMATIC ROLE) TO OFFER TO SEND HIM TO
ISRAEL. HERE I WOULD HAVE NO OBJECTION TO HIS DESCRIBING
FOR THE ISRAELIS THE INFORMATION HE COLLECTED IN JORDAN
AS LONG AS HE IS PREPARED TO PROTECT A FEW SENSITIVE
PIECES OF INFORMATION. HOPEFULLY THE ISRAELIS
WOULD THEN BE PREPARED TO TALK WITH HIM. IN ANY EVENT,
I BELIEVE HIS EXPERTISE WOULD CONTINUE TO BE REQUIRED IF
WE TAKE ON A DIPLOMATIC ROLE AND THAT SOME LEGAL PRECISION
ON THE ISSUES WILL HELP TO CLARIFY, BUT NOT TO RESOLVE,
THE PROBLEM.

8. IN SUM, I BELIEVE WE SHOULD NOW MOVE DISCUSSIONS,
AS WE HAVE BEGUN TO DO WITH THE ISRAELIS (ATHERTON-
BAR ON) AND JORDANIANS (WITH KING HUSSEIN) INTO
POLITICAL CHANNELS. INDEED I READ THAT AS THE PURPOSE OF
STATE 290161. FURTHER WE SHOULD IN THAT CONTEXT BE AS
FORTHCOMING AS POSSIBLE WITH THE ISRAELIS AND THE JOR-
DANIANS ON THE ISSUE. THE PREPARATION OF A US APPRECI-
ATION MIGHT BE THE BEST WAY TO DO THIS AS A BASIS FOR
DISCUSSION. THE LEGAL STUDY SHOULD BE BLENDED INTO THE
SUPPORT FOR POLITICAL GALKS, AN INTERIM REPORT PREPARED,
PROFESSOR BAXTER OFFERED TO ISRAELIS, AND CONTINUED ON
AS A CONSULTANT. IN ANY DECISIONS WE MAKE, I WOULD OF
COURSE EXPECT THAT WE WOULD KEEP BOTH SIDES FULLY IN-
FORMED OF WHAT WE ARE PLANNING TO DO.
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